

1 Unites States Government, as noted in the Court's previous Order denying defendant's 12(c) motion,
2 expended tremendous effort investigating Tracy Jonassen's claim. Tracy Jonassen alleged very serious
3 issues amounting to possible fraud. This was all done in the background context of investigations by the
4 Washington State Auditor and civil and criminal investigations by the federal government pertaining to the
5 POS contracting practices associated with the Third Runway Project. These are the matters Tracy Jonassen
6 pursued in his FCA complaint. These are the matters he brought to the POS management's attention.

7 Defendant relies upon dicta and a very narrow reading of the 9th Circuit opinion in *United States ex.*
8 *rel. Hopper v. Anton*, 91 F.3d 1261 (9th Cir. 1996), in making their argument. *Hopper, supra.*, is factually
9 and procedurally distinguished from the present case. The holding in *Hopper, supra.*, was based upon a
10 jury's factual determination that the only individual they found to be discriminating against the plaintiff was
11 a single individual supervisor of the defendant employer. The jury found that the supervisor had not known
12 the plaintiff was engaged in protected activity. Thus, the jury's verdict for the plaintiff was not established
13 by the evidence as the required element of employer knowledge (of plaintiff's protected activity) had not
14 been established.

15 The dicta in *Hopper, supra.*, cited by defendant in making their claim that Mr. Jonassen had a
16 meritless FCA claim was not necessary to the Court's result, as is noted above. The concept of a FCA action
17 as a prerequisite to a 31 U.S.C. 3130(h) whistle blower retaliation suit simply is a short hand reference to
18 the statutory requirements for a 3130(h) claim, i.e, that an employee must not “. . . *in any other manner*
19 *discriminated against in the terms and conditions of employment because of lawful acts done by the*
20 *employee . . . in furtherance of an action under this section or other efforts to stop 1 or more violations of*
21 *this subchapter.*” [31 U.S.C 3721, et seq.] 31 U.S.C. 3730(h) (emphasis added).

22 Mr. Jonassen has alleged that he has been and continues to be discriminated against by defendant
23 because of his investigation of, initiation of, testimony for, and/or assistance (to the United States) in the
24 action he did ultimately file in this Court alleging a FCA claim against defendant. Mr. Jonassen has properly
25 established sufficient facts that he took acts in furtherance of a FCA action and, thus, he is in a protected
26 class. The factual detail submitted with the declarations filed concomitant with this response establishes